

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on March 9, 2001 at 3:40 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Bill Tash (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: Sen. Glenn Roush (D)

Members Absent: None.

Staff Present: Melissa Rasmussen, Committee Secretary
Mary Vandebosch, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 421, 3/5/01
HJ 19, 3/5/01
HJ 21, 3/5/01
Executive Action: None

HEARING ON HB 421

Sponsor: REP. JIM SHOCKLEY, HD 61, Victor

Proponents: REP. DAN MCGEE, HD 21, Laurel
REP. MONICA LINDEEN, HD 7, Huntley
Daniel Dutton, Self
Jeanie Alderson, Self

Opponents: Tom Ebzery, QWEST
Don Allen, WETA

Opening Statement by Sponsor:

REP. JIM SHOCKLEY, HD 61, Victor, said HB 421 was a simple bill that states existing law. If land is taken or condemned for a single use in an easement situation, then the land can only be used for that specific use. He proclaimed that technology evolves over time and it's important that the language of the law reflect those changes. He charged that when land is condemned it should only be used for a specific purpose when necessary. He stated that the winning party drafts the order and the judge signs it. The law needs to be made clear.

Proponents' Testimony:

REP. DAN MCGEE, HD 21, Laurel, informed the committee that he served on the Eminent Domain Subcommittee of the EQC as a member of the Law Justice Indian Affairs Committee. He stated that the bill exists to clarify existing law. He referenced lines 16 and 17 in the bill to point out the language that needs clarification. He informed the committee that the bill is a result of a conversation with a landowner from the Tongue River railroad country. He added that the clarification in the technology section is necessary to clear up concerns with industry over such issues as fiberoptic lines.

REP. MONICA LINDEEN, HD 7, Huntley, told the committee that she served on the Eminent Domain Subcommittee of the EQC. She charged that it is necessary to achieve a fair balance between the landowners rights and the public interest. The ability to take land through condemnation is an important right. It is imperative to uphold the public rights when carrying out such acts. She also gave the support of REP. KIM GILLAN, HD 11, Billings.

Daniel Dutton, Representing Himself, spoke for himself in favor of the bill and submitted written testimony **EXHIBIT**(nas54a01).

Jeanie Alderson, Representing Herself, stated that she participated in the eminent domain EQC hearings. She charged that making the law clear is vital for agriculture. She stressed the importance of using land for the specific purpose of what you take it for. She pointed out that the bill is designed to protect landowners, not hurt industry.

Opponents' Testimony:

Tom Ebzery, QWEST, charged that the bill is not part of the recommendations by the EQC. He stated that the bill was defeated by the EQC subcommittee. He pointed out that the words "evolved technology" are not defined. Not defining these terms could lead to numerous lawsuits. He offered that the language should have been put into the public uses section. He stated that they are concerned that the language would prevent utilities from providing services that they are often mandated to do. He argued that if a judge rejects a condemnation order prepared by an attorney the use will not occur. Line 18 page 1, "purpose" is misleading because that is not what eminent domain is addressing. The word also changes language addressed earlier in the bill. He stated that they have supported all past eminent domain bills, but the bill lies outside of the careful consideration by the EQC subcommittee and should not advance.

Don Allen, WETA, conceded that he appreciated the attempt by the sponsor to clarify the language in the bill. He pointed out that he participated in the study by the EQC, and this bill was not approved by the committee. Part of his objection was because of unintended consequence that may arise from the language, specifically the word "limitation". He questioned what would happen if the judge forgot to add something; what would happen to correct it. Even though the intention is good the new language will have to be reinterpreted.

Informational Testimony:

SEN. MACK COLE, SD 4, Hysham, stated that he was the Chairman of the EQC subcommittee. He clarified that there were four bills that emerged from the committee, and that this bill was not one of them. He expressed his concern that this bill may not help the people the way it is intended to.

Questions from Committee Members and Responses:

SEN. KEN TOOLE questioned what type of restrictions were on condemned land. **REP. SHOCKLEY** told him that the judge picks a winner, they draft it, agree upon it and the judge signs it. The judgements are very clear as to what the winner is awarded.

{Tape : 1; Side : B}

If the winner does not get what they want they can appeal. Condemnation lawsuits are the only type of lawsuit where the person can use the property before the final ruling.

SEN. LORENTS GROSFIELD expressed concern that the bill did not do what is intended. He pointed out line 18 and questioned if it excludes the condemner from using it. He questioned if the intent of the language was to fix those types of problems. **REP. SHOCKLEY** told him that the law would not do what **SEN. GROSFIELD** suggested. He gave the example of the Cenex pipeline and cable. Cenex put in a fiberoptic cable after the fact to help the railroad. He stated that if the railroad had a telegraph line they could replace it with a fiberoptic line. If the railroad allows the phone company to put in a fiberoptic cable and gets a percentage of the profits, according to the bill the phone company would have to get an easement for the fiberoptic cable because it does not pertain to the railroad. **SEN. GROSFIELD** asked where in the bill it had that specific language. He also inquired if the landowner refused the easement would they have to go through the condemnation process. **REP. SHOCKLEY** stated that if another entity wants to use the easement for another purpose and they cannot negotiate it, they would have to go through the process. **SEN. GROSFIELD** questioned if it was the same entity and would they have to go through the process. **REP. SHOCKLEY** declared that they would; line 18 provides the specific language.

SEN. GROSFIELD asked **Mr. Ebzery** what his problem with the bill was. **Mr. Ebzery** informed the committee that it is already settled in Montana case law that you cannot have more than one use unless it is in the condemnation order. He added that the language changes case law technology. Once that language changes and is not specifically spelled out in the condemnation order they would have to start all over again. **SEN. GROSFIELD** asked if the language on line 26 took care of that problem. **Mr. Ebzery** said he would not use that language because it does not get the job done.

VICE CHAIRMAN DALE MAHLUM asked if evolved technology would encompass the new ultra-sensitive pipelines that run through a persons property. **REP. SHOCKLEY** declared that it would. Evolved technology was added to the bill to encourage industry.

SEN. COLE asked if **Mr. Ebzery** was familiar with the Cenex pipeline case. **Mr. Ebzery** informed him that he was familiar with the case. The issue was weather or not telegraph could be replaced with fiberoptic, and if that was within the "uses" section of the law. He informed the committee that the Supreme

Court ruling stated that teegraph would accomplish the same purpose as fiberoptic. **Mr. Ebzery** charged that the court ruling is enough. The legislature does not need to pass a statute that is open to interpretation and may conflict with the ruling of the court. **SEN. COLE** wondered how he felt about new Section 2 in the bill. **Mr. Ebzery** told him that he was concerned about the implications of the definition of evolved technology. He argued that the language creates confusion. It would be better to use the courts interpretation. **SEN. COLE** asked if the new language would cause the courts to have to reinterpret their ruling. **Mr. Ebzery** warned that the language would change the intent rather than clarify.

Closing by Sponsor:

REP. SHOCKLEY stressed that the subcommittee recommended that the condemned land could only be used for the purpose for which it was taken. He urged the committee to adopt language that was industry friendly, the bill does that. He argued that most of the people who testified disagreed with the bill because they did not want to be condemned. He countered the need to rely on court opinions. He stated that the legislature prefers to rely on statutes. He argued that the bill's language gives the condemning entity an advantage if there is litigation. The briefs are easy to write. He stressed that he wanted to make the language clear, and this bill is a good compromise.

{Tape : 2; Side : A}

HEARING ON HJ 19

Sponsor: REP. AUBYN CURTISS, HD 81, Fortine

Proponents: Patrick Heffernan, MT Logging Association
Cary Hegreberg, MT Wood Products Association
Don Allen, WETA
Gail Abercrombie, MT Petroleum Association
Nancy Schlepp, MT Farm Bureau
Patti Keebler, MT AFL-CIO

Opponents: Sherman Janke, Self
Joe Frost, City of Bozeman
Joe Gutkoski, Self
Tim Stevens, Greater Yellowstone Coalition
Mary Huntington-Lehner, Self
Paul Johnson, Last Chance Audubon Society
Goni Lauckner, Self

Will Boland, Self
Mark Good, MT Wilderness Association
Kathy Lloyd, Self
Paul Edwards, Self
Alexandra Phillips, MT Wilderness Association
John Gatchell, MT Wilderness Association
Jeff Barber, Clark Fork Coalition
David Rusoff, Self
Matthew Leow, MT Public Interest Research Group
Bob Decker, MT Wilderness Association

Opening Statement by Sponsor:

REP. AUBYN CURTISS, HD 81, Fortine, handed out a copy of the AFL-CIO's position on the roadless initiative **EXHIBIT (nas54a02)**. She charged that many individuals in her district see the roadless initiative as a way to lock up public lands and natural resources by the past administration. A lawsuit has been initiated by her counties. She stated that science cannot be used to calculate the data for the roadless initiative.

Proponents' Testimony:

Patrick Heffernan, MT Logging Association, stated that the resolution itself could use some clarification. He dictated that the way the land is currently being used is an appropriate part of forest management planning. However, it is not appropriate to do this type of large area designation through administrative rule. The designation could lead to numerous problems for the forest service, especially in the rare two boundaries.

Cary Hegreberg, MT Wood Products Association, informed the committee that he saw a white Mercedes 560SEL in the parking lot with the bumper sticker "keep it wild" on it, the slogan of the MT Wilderness Association. He stated that to the sawmill workers he represents the bumper sticker smugly says, "Let them eat cake. I've made mine, I don't care if the rest of you can't support your families". The roadless initiative signed by President Clinton locked up six million acres of Montana's federal land. He recalled the hearing on SB 377, the bill that established guidelines for MEPA. He argued that during the hearing the opposition stated that 18 months was not enough time to make a good decision. He questioned how the Clinton administration could sign the roadless initiative with a little over a year of study. He charged that many of the concerns addressed during the public hearings were not adequately answered. He commented that Idaho is filing a lawsuit because of similar circumstances. He inquired why there was a rush to sign the initiative before the Clinton administration left office. He wondered if the opponents

to the bill are serious about lengthy public opinion and analysis and why did they have the initiative signed before the next administration took office. He handed out an opinion poll to the committee **EXHIBIT (nas54a03)** and directed their attention to questions number three and six, page seven. He charged that the ultimate public opinion is taken at the election booth. This was a key issue, and virtually every opponent who took a stand against the roadless initiative is now in office.

Don Allen, WETA, stated that he was concerned with the size of acreage set aside in the roadless initiative. He recounted that in the early days of forest management several supervisors from various organizations would meet together to plan and travel around the state looking at the forests. He added that this is not just a timber issue. It involves everyone who likes to use public lands. He charged that the resolution would send an appropriate message from the people.

Gail Abercrombie, MT Petroleum Association, articulated that their organization is affiliated with a group called Public Land Advocacy. The lady that heads up the organization has a long history of dealing with this issue. One of the arguments brought up was that the forest service did not have the money to maintain the roads that were currently on their inventory. Oil and gas argued that when they build a road into a drill site they have to build, maintain and rehabilitate it at no cost to the forest service. Oil and gas asked to be exempt from the roadless initiative because of how they currently manage roads. Their request was denied. She stated that when a drill is set up it is put out of sight from the public. That way the visual impact would be eliminated from people who were using those areas for recreation. She agreed that the study was done too quickly.

Nancy Schlepp, MT Farm Bureau, told the committee that continued multiple-use is imperative to maintaining a healthy economy.

Patti Keebler, MT AFL-CIO, informed the committee that the last rally held by their delegates adopted a resolution against the roadless initiative. They asked to be on record in support of HJ 19.

Opponents' Testimony:

Sherman Janke, Representing Himself, declared that he is not a member of the MT Wilderness Association. He warned that the 'whereas' in the bill are subject to question. He handed out a comparison of total personal income for Montana in 1990 and 1997 **EXHIBIT (nas54a04)**. He made reference to numerous figures in the

handout and concluded his remarks by proclaiming that there are more than enough roads open for recreation.

Joe Frost, City of Bozeman, stated that the Bozeman City Commission unanimously urges the legislature to support a far sided and comprehensive policy that would effectively protect remaining roadless areas administered by the US Forest Service. He charged that roadless areas offer a wide variety of uses for recreation. The city of Bozeman lies in the middle of numerous roadless lands. Bozeman was excited to know that those areas would be protected under this plan.

{Tape : 2; Side : B}

Joe Gutkoski, Representing Himself, spoke for himself in opposition to the bill and submitted written testimony **EXHIBIT (nas54a05)**.

Tim Stevens, Representing Himself, argued that the resolution is wrong-headed and inaccurate in a number of areas. He stated that the areas that are easy to get to already have roads. The areas in question are too difficult to access. It would be virtually impossible to build a road. He suggested that the roadless initiative does not address activities such as grazing and snowmobiling. He informed the committee that he attended a meeting on economic development on behalf of the city of Livingston. During that meeting the idea of logging as a way to help Montana's struggling economy was not suggested. He charged that Montana still has great natural resources, it is important to protect the last remaining lands.

Mary Huntington-Lehner, Representing Herself, spoke for herself in opposition to the bill and submitted written testimony **EXHIBIT (nas54a06)**. During her testimony she confessed that she was the owner of the white Mercedes that **Mr. Hegreberg** made reference to. She argued that she purchased the car because it would be safe for her husband and sick daughter to get around in.

Paul Johnson, Last Chance Audubon Society, argued that numerous public meetings led to the roadless rule. He stated that over 1.5 million public comments were made on a draft EIS before a decision was made. According to the forest service this was the largest public involvement project in history. He labeled the roadless lands as the last refuge in Montana. He pointed out that the roadless rule does not hinder access, it still allows recreational use. The timber harvest will not be affected by the roadless rule.

Goni Lauckner, Representing Herself, informed the committee that her husband taught her to love the land. She stated that she lives off of Social Security and that is all she needs. She charged that she would rather have a place to hike than material items. She claimed that destroying the beauty of the forest goes against the words of the Bible. She urged the committee to vote against the resolution in order to preserve these areas for future generations.

Will Boland, Representing Himself, provided a map of roads and roadless areas **EXHIBIT (nas54a07)**. He read aloud from a study on the roadless initiative by a group in Oregon. In that study they stated that the roadless initiative would have a positive impact on Montana's economy. He argued that the roadless initiative would eliminate costly forest management due to low timber sales. He proclaimed that Montana needs to wake-up to the changing global economy. Timber employment took a nose dive in Oregon and Washington, but those states are still doing very well economically. In fact, employment has increased in those states.

Mark Good, MT Wilderness Association, notified the committee that a recent poll identified that 76% of American's support the roadless initiative, including 62% of Republicans. Further the poll found that 72% of workers surveyed in the West sponsor the roadless initiative. In a different poll done by the Conservation voters, they found that 62% of Montana's residents support the roadless initiative.

{Tape : 3; Side : A}

He urged the committee to respect the wishes of the majority of Montana's residents and oppose the resolution.

Kathy Lloyd, Representing Herself, spoke for herself in opposition to the bill and submitted written testimony **EXHIBIT (nas54a08)**

Paul Edwards, Representing Himself, accused the legislature of engaging in a useless act of embarrassment. He argued that many American's have fought for this initiative, it is up to the legislature to carry out the will of the people.

Alexandra Phillips, MT Wilderness Association, stated that the roadless rule had thirty-one meetings in Montana. She stated that the roadless rule was well publicized and everyone knew about it. However, HJ 19 has had very little public input. The first hearing was on the day of a bad snowstorm and now the

hearing was being cut short because of time constraints. She argued that the resolution needs more public input.

John Gatchell, MT Wilderness Association, charged that four of the six 'whereas' in the resolution are false. He stated that roadless lands have always been defacto wilderness. Roadless areas have been studied by four different presidents two Democrats and two Republicans. He stated that the resolution is not in keeping with the Multiple-Uses Act. He handed out a copy of the Multiple-Use Sustained-Yield Act of 1960

EXHIBIT (nas54a09). He maintained that the President of the United States has the right, by law, to designate land as forest reserves.

Jeff Barber, Clark Fork Coalition, spoke in opposition to the bill and submitted written testimony **EXHIBIT (nas54a10)**. He also spoke on behalf of **Janet Ellis, Audubon**.

David Rusoff, Representing Himself, stated that roadless land is a great gift. He clarified that he is not anti-timber, but supports multiple-use.

Matthew Leow, MT Public Interest Research Group, charged that the resolution is frivolous and ill-founded.

Bob Decker, MT Wilderness Association, claimed that most of the language in the resolution was false and irrelevant. He challenged the committee to oppose the resolution and provide quality control.

Questions from Committee Members and Responses:

SEN. TOOLE started his questions by inquiring about what type of cars CEO's drove.

SEN. TOOLE wondered how much timber has been locked up by the roadless initiative. **Mr. Hegreberg** stated that is a question they would like answered by the US Forest Service. To his knowledge there have been thousands of acres that have been previously declared suitable for timber harvest and are now locked-up. He charged that there should be a local process to make suitable determinations.

SEN. TOOLE questioned if **REP. CURTISS** would feel comfortable moving the bill forward considering the accusations about falsified information. She charged that the language could be amended. She apologized if the information was inaccurate, the statistics for the bill came from exhibit 2. **SEN. TOOLE** inquired if there was a difference between the legal status for the

activities that can occur in a designated roadless area should the bill still go forward even though it states there is no difference between a roadless and a wilderness area. **REP.**

CURTISS told him that the research has been done to accurately answer those concerns, she would feel comfortable moving forward.

SEN. TOOLE asked about the lack of public process surrounding the resolution. **REP. CURTISS** charged that the hearing had as much notice as all hearings that take place in the legislature. He asked if she would agree that there was more public input put into the roadless initiative than the resolution. She claimed that the public input was gained by largely urban areas. He asked who owns the National Forest. She told him that the people of the United States do.

CHAIRMAN CRISMORE asked **Mr. Janke** to comment on the data he supplied the committee, exhibit 4. He questioned if the animal restrictions were part of the closed road numbers. **Mr. Janke** informed him that the data represents what was true in June 1990 of the mileage that was open. **CHAIRMAN CRISMORE** inquired if he was a resident of Libby, a town that has fallen victim to timber shortages due to federal designation, would he still suggest that the timber surrounding that area be untouched. **Mr. Janke** did not deny that being laid off is traumatic. He argued that the economy is changing and with those changes people must change their way of thinking as well as their vocation.

{Tape : 3; Side : B}

Closing by Sponsor:

REP. CURTISS addressed the lawsuit of 27 counties questioning the constitutionality of the roadless act. She charged that 45% of the roads in her county have been closed and many more obliterated at a cost of thousands of dollars to the taxpayers. She argued that the purpose of the protection of natural resources is to provide a sustainable supply of fiber and products as well as water protection. When the Columbia River Basin was studied it was determined that as many as 40 counties would not be able to remain economically feasible.

HEARING ON HJ 21

Sponsor: **REP. RICK LIABLE, HD 59, Victor**

Proponents: **Patrick Heffernan, MT Logging Association**
Cary Hegreberg, MT Wood Products Association

Opening Statement by Sponsor:

REP. RICK LIABLE, HD 59, Victor, told the committee that Article 9 Section 3 of the Montana Constitution states that, "the legislature shall provide adequate remedies for the protection of environmental life support system from degradation and provide adequate remedies to provide unreasonable depletion and degradation of natural resources". He stressed the term unreasonable, and talked of the past summers devastating fires. According to statute management burns are not allowed during the summer or winter, which would be the safest time of year. He argued that the forest continue to build-up with fuel. Allowing a gradual burning of forest lands would, in essence, lessen the impact on air quality and reduce fire risk.

Proponents' Testimony:

Patrick Heffernan, MT Logging Association, stated that the resolution is worthwhile and addresses an important issue. He said that the Logging Association is trying to develop other types of fuel treatments to reduce forest fire intensity and smoke emissions. The idea behind the new methods is to generate the least amount of impact on the human environment. He speculated that the task of studying the issue would be given to the EQC.

Cary Hegreberg, MT Wood Products Association, agreed with what **Mr. Heffernan** said and added that this is a good way to study a realistic and reasonable approach to reduce fire hazards. He stated that it is hard to balance air quality standards with the need to reduce fire risks. He argued that the resolution is a good way to find a balance.

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA wondered if the EQC would do the study. She was concerned that this type of resolution would eliminate public participation. **REP. LIABLE** informed her that he was open to amendments that would allow the EQC to do the study. He added that he was concerned that opening up the language would cause a public free-for-all. He stated that he wanted to avoid that in the interest of conducting a serious study, too many opinions may not allow a quality study in a short amount of time. **SEN. COLE** added that there would be enough leeway in putting together a good council.

VICE CHAIRMAN MAHLUM stated that he has a friend who has already purchased a generator that uses biomass fuels. He inquired if the resolution was aimed at supporting those kinds of ideas. **REP. LIABLE** declared that that was the exact intent of the

resolution. It is important to clean excess fuels out of the forests.

SEN. BILL TASH wanted to know if the bill addressed other types of forest management practices. **REP. LIABLE** told him that the resolution could include other issues, but he would prefer a specific study regarding slash.

Closing by Sponsor:

REP. LIABLE warned against degradation of Montana's forests. He charged that it is imperative to remove the fuel from our forests. The resolution is a great way to do that.

The following testimonies were handed in at the end of the meeting:

Robert Tomich, Representing Himself, submitted written testimony in opposition to HJ 19 **EXHIBIT(nas54a11)**.

George Lehner, Representing Himself, submitted written testimony in opposition to HJ 19 **EXHIBIT(nas54a12)**.

Lewis Holzheimer, Representing Himself, submitted written testimony in opposition to HJ 19 **EXHIBIT(nas54a13)**.

ADJOURNMENT

Adjournment: 6:10 P.M.

SEN. WILLIAM CRISMORE, Chairman

MELISSA RASMUSSEN, Secretary

WC/MR

EXHIBIT (nas54aad)